

§ 905.314

24 CFR Ch. IX (4–1–21 Edition)

(4) Accessibility Requirements as required by section 504 of the Rehabilitation Act (29 U.S.C. 794) and implementing regulations at 24 CFR part 8; title II of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) and implementing regulations at 28 CFR part 35; and, if applicable, the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations at 24 CFR part 100; and

(5) Occupancy of high-rise elevator structures by families with children. Pursuant to 42 U.S.C. 1437d(a), a high-rise elevator structure shall not be provided for families with children regardless of density, unless the PHA demonstrates and HUD determines that there is no practical alternative.

(c) All modernization projects shall be designed and constructed in compliance with:

(1) The modernization standards as prescribed by HUD;

(2) Accessibility requirements as required by section 504 of the Rehabilitation Act (29 U.S.C. 794) and implementing regulations at 24 CFR part 8; title II of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) and implementing regulations at 28 CFR part 35; and, if applicable, the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations at 24 CFR part 100; and

(3) Cost-effective energy conservation measures, identified in the PHA's most recently updated energy audit.

(d) Pursuant to the Energy Policy Act of 2005, in purchasing appliances, PHAs shall purchase appliances that are Energy Star products or Federal Energy Management Program designed products, unless the PHA determines that the purchase of these appliances is not cost effective.

(e) *Broadband infrastructure.* Any new construction or substantial rehabilitation, as substantial rehabilitation is defined in 24 CFR 5.100, of a building with more than 4 rental units and funded by a grant awarded or Capital Funds allocated after January 19, 2017 must include installation of broadband infrastructure, as this term is also defined in 24 CFR 5.100, except where the PHA determines and, in accordance with § 905.326, documents the determination that:

(1) The location of the new construction or substantial rehabilitation makes installation of broadband infrastructure infeasible;

(2) The cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or

(3) The structure of the housing to be rehabilitated makes installation of broadband infrastructure infeasible.

[78 FR 63773, Oct. 24, 2013, as amended at 81 FR 92639, Dec. 20, 2016]

§ 905.314 Cost and other limitations.

(a) *Eligible administrative costs.* Where the physical or management improvement costs will benefit programs other than Public Housing, such as the Housing Choice Voucher program or local revitalization programs, eligible administrative costs are limited to the amount directly attributable to the public housing program.

(b) *Maximum project cost.* The maximum project cost represents the total amount of public housing capital assistance used in connection with the development of a public housing project, and includes:

(1) Project costs that are subject to the TDC limit (*i.e.*, HCC and Community Renewal Costs); and

(2) Project costs that are not subject to the TDC limit (*i.e.*, Additional Project Costs). The total project cost to be funded with public housing capital assistance, as set forth in the proposal and as approved by HUD, becomes the maximum project cost stated in the ACC Amendment. Upon completion of the project, the actual project cost is determined based upon the amount of public housing capital assistance expended for the project, and this becomes the maximum project cost for purposes of the ACC Amendment.

(c) *TDC limit.* (1) Public housing funds, including Capital Funds, may not be used to pay for HCC and Community Renewal Costs in excess of the TDC limit, as determined under paragraph (b)(2) of this section. However, HOPE VI grantees will be eligible to request a TDC exception for public housing and HOPE VI funds awarded in FFY

1996 and prior years. PHAs may also request a TDC exception for integrated utility management, capital planning, and other capital and management activities that promote energy conservation and efficiency. HUD will examine the request for TDC exceptions to ensure that they would be cost-effective, so as to ensure that up-front expenditures subject to the exceptions would be justified by future cost savings.

(2) *Determination of TDC limit.* HUD will determine the TDC limit for a public housing project as follows:

(i) *Step 1: Unit construction cost guideline.* HUD will first determine the applicable "construction cost guideline" by averaging the current construction costs as listed in two nationally recognized residential construction cost indices for publicly bid construction of a good and sound quality for specific bedroom sizes and structure types. The two indices HUD will use for this purpose are the R.S. Means cost index for construction of "average" quality and the Marshall & Swift cost index for construction of "good" quality. HUD has the discretion to change the cost indices to other such indices that reflect comparable housing construction quality through a notice published in the FEDERAL REGISTER.

(ii) *Step 2: Bedroom size and structure types.* The construction cost guideline is then multiplied by the number of units for each bedroom size and structure type.

(iii) *Step 3: Elevator and nonelevator type structures.* HUD will then multiply the resulting amounts from step 2 by 1.6 for elevator type structures and by 1.75 for nonelevator type structures.

(iv) *Step 4: TDC limit.* The TDC limit for a project is calculated by adding the resulting amounts from step 3 for all the public housing units in the project.

(3) *Costs not subject to the TDC limit.* Additional project costs are not subject to the TDC limit.

(4) *Funds not subject to the TDC limit.* A PHA may use funding sources not subject to the TDC limit (e.g., Community Development Block Grant (CDBG) funds, low-income housing tax credits, private donations, private financing, etc.) to cover project costs that exceed the TDC limit or the HCC limit de-

scribed in this paragraph (c). Such funds, however, may not be used for items that would result in substantially increased operating, maintenance, or replacement costs, and must meet the requirements of section 102 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989) (42 U.S.C. 3545). These funds must be included in the project development cost budget.

(d) *Housing Construction Costs (HCC).* (1) *General.* A PHA may not use Capital Funds to pay for HCC in excess of the amount determined under paragraph (d)(2) of this section.

(2) *Determination of HCC limit.* HUD will determine the HCC limit as listed in at least two nationally recognized residential construction cost indices for publicly bid construction of a good and sound quality for specific bedroom sizes and structure types. The two indices HUD will use for this purpose are the R.S. Means cost index for construction of "average" quality and the Marshall & Swift cost index for construction of "good" quality. HUD has the discretion to change the cost indices to other such indices that reflect comparable housing construction quality through a notice published in the FEDERAL REGISTER. The resulting construction cost guideline is then multiplied by the number of public housing units in the project, based upon bedroom size and structure type. The HCC limit for a project is calculated by adding the resulting amounts for all public housing units in the project.

(3) The HCC limit is not applicable to the acquisition of existing housing, whether or not such housing will be rehabilitated. The TDC limit is applicable to such acquisition.

(e) *Community Renewal Costs.* Capital Funds may be used to pay for Community Renewal Costs in an amount equivalent to the difference between the HCC paid for with public housing capital assistance and the TDC limit.

(f) *Rehabilitation of existing public housing projects.* The HCC limit is not applicable to the rehabilitation of existing public housing projects. The TDC limit for modernization of existing public housing is 90 percent of the

TDC limit as determined under paragraph (c) of this section. This limitation does not apply to the rehabilitation of any property acquired pursuant to § 905.600 of this part.

(g) *Modernization cost limits.* If the modernization costs are more than 90 percent of the TDC, then the project shall not be modernized. Capital Funds shall not be expended to modernize an existing public housing development that fails to meet the HUD definition of reasonable cost found in § 905.108 of this part, except for:

- (1) Emergency work;
- (2) Essential maintenance necessary to keep a public housing project habitable until the demolition or disposition application is approved; or
- (3) The costs of maintaining the safety and security of a site that is undergoing demolition.

(h) *Administrative cost limits and Capital Fund Program Fee.* (1) Administrative cost limits (for non-asset-management PHAs). The PHA shall not budget or expend more than 10 percent of its annual Capital Fund grant on administrative costs, in accordance with the CFP 5-Year Action Plan.

(2) Capital Fund Program Fee (for asset-management PHAs). For a PHA that is under asset management, the Capital Fund Program Fee and administrative cost limits are the same. For the Capital Fund Program Fee, a PHA may charge a management fee of up to 10 percent of the annual CFP formula grant(s) amount, excluding emergency and disaster grants and also excluding any costs related to lead-based paint or asbestos testing, in-house architectural and engineering work, or other special administrative costs required by state or local law.

(i) Modernization. The PHA shall not budget or expend more than 10 percent of its annual Capital Fund grant on administrative costs, in accordance with its CFP 5-Year Action Plan. The 10 percent limit excludes any costs related to lead-based paint or asbestos testing, in-house Architectural and Engineering work, or other special administrative costs required by state or local law.

(ii) Development. For development work with Capital Fund and RHF grants, the administrative cost limit is 3 percent of the total project budget,

or, with HUD's approval, up to 6 percent of the total project budget.

(i) *Management improvement cost limits.* In Fiscal Year (FY) 2014, a PHA shall not use more than 18 percent of its annual Capital Fund grant for eligible management improvement costs identified in its CFP 5-Year Action Plan. In FY 2015, a PHA shall not use more than 16 percent of its annual Capital Fund grant for eligible management improvement costs identified in its CFP 5-Year Action Plan. In FY 2016, a PHA shall not use more than 14 percent of its annual Capital Fund grant for eligible management improvement costs identified in its CFP 5-Year Action Plan. In FY 2017, a PHA shall not use more than 12 percent of its annual Capital Fund grant for eligible management improvement costs identified in its CFP 5-Year Action Plan. In FY 2018 and thereafter, a PHA shall not use more than 10 percent of its annual Capital Fund grant for eligible management improvement costs identified in its CFP 5-Year Action Plan. Management improvements are an eligible expense for PHAs participating in asset management.

(j) *Types of labor.* A PHA may use force account labor for development and modernization activities if included in a CFP 5-Year Action Plan that is approved by the PHA Board of Commissioners and HUD. HUD approval to use force account labor is not required when the PHA is designated as a high performer under PHAS.

(k) *RMC activities.* When the entire development, financing, or modernization activity, including the planning and architectural design, is administered by an RMC, the PHA shall not retain any portion of the Capital Funds for any administrative or other reason, unless the PHA and the RMC provide otherwise by contract.

(l) *Capital Funds for operating costs.* A PHA may use Capital Funds for operating costs only if it is included in the CFP 5-Year Action Plan that is approved by the PHA Board of Commissioners and HUD, and limited as described in paragraphs (1)(1) and (2) of this section. Capital Funds identified in the CFP 5-Year Action Plan to be transferred to operations are obligated once the funds have been budgeted and

drawn down by the PHA. Once such transfer of funds occurs, the PHA must follow the requirements of 24 CFR part 990 with respect to those funds.

(1) *Large PHAs.* A PHA with 250 or more units may use no more than 20 percent of its annual Capital Fund grant for activities that are eligible under the Operating Fund at 24 CFR part 990.

(2) *Small PHAs.* A PHA with less than 250 units, that is not designated as troubled under PHAS, may use up to 100 percent of its annual Capital Fund grant for activities that are eligible under the Operating Fund at 24 CFR part 990, except that the PHA must have determined that there are no debt service payments, significant Capital Fund needs, or emergency needs that must be met prior to transferring 100 percent of its funds to operating expenses.

§ 905.316 Procurement and contract requirements.

(a) *General.* PHAs shall comply with 24 CFR part 200, and HUD implementing instructions, for all capital activities including modernization and development, except as provided in paragraph (c) in this section.

(b) *Contracts.* The PHA shall use all contract forms prescribed by HUD. If a form is not prescribed, the PHA may use any Office of Management and Budget (OMB) approved form that contains all applicable federal requirements and contract clauses.

(c) *Mixed-finance development projects.* Mixed-finance development partners may be selected in accordance with 24 CFR 905.604(h). Contracts and other agreements with mixed-finance development partners must specify that they comply with the requirements of §§ 905.602 and 905.604 of this part.

(d) *Assurances of completion.* Notwithstanding 24 CFR 85.36 (as revised April 1, 2013), for each construction contract over \$100,000, the contractor shall furnish the PHA with the following:

(1) A bid guarantee from each bidder, equivalent to 5 percent of the bid price; and

(2) One of the following:

(i) A performance bond and payment bond for 100 percent of the contract price;

(ii) A performance bond and a payment bond, each for 50 percent or more of the contract price;

(iii) A 20 percent cash escrow;

(iv) A 10 percent irrevocable letter of credit with terms acceptable to HUD, or

(v) Any other payment method acceptable to HUD.

(e) *Procurement of recovered materials.* PHAs that are state agencies and agencies of a political subdivision of a state that are using assistance under this part for procurement, and any person contracting with such PHAs with respect to work performed under an assisted contract, must comply with the requirements of section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. In accordance with section 6002, these agencies and persons must procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered material practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired in the preceding fiscal year exceeded \$10,000; must procure solid waste management services in a manner that promotes energy and resource recovery; and must have established an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

[78 FR 63770, Oct. 24, 2013, as amended at 80 FR 75942, Dec. 7, 2015]

§ 905.318 Title and deed.

The PHA, or, in the case of mixed-finance, the Owner Entity, shall obtain title insurance that guarantees the title is good and marketable before taking title to any and all sites and properties acquired with public housing funds. Immediately upon taking title to a property, the PHA or Owner Entity shall record the deed and a Declaration of Trust or, in the case of mixed finance, a Declaration of Restrictive Covenants, in the form and in the manner and order prescribed by HUD. The PHA shall at all times maintain a recorded Declaration of Trust or Declaration of Restrictive Covenants in the